IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 18293

MANUEL CEDILLO, ALBERTO SANCHEZ ET AL.,
Appellants,

vs.

STANDARD OIL COMPANY OF TEXAS,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS.

(May 26, 1961.)

Before CAMERON and BROWN, Circuit Judges, and HANNAY, District Judge.

CAMERON, Circuit Judge: We are called upon here to determine whether the appellants were in fact the employees of Standard Oil Company of Texas, appellee, and,

as such employees, were covered by the provisions of the collective bargaining contract existing between Standard Oil and The International Union of Operating Engineers, Local No. 552, the certified bargaining agent for Standard's employees. The lower court found they were not. We agree.

The appellants, Manuel Cedillo, Alberto Sanchez and thirty-six others, had worked as laborers for various periods of time in the maintenance division at the El Paso County, Texas, plant of Standard Oil. At all times relevant hereto Standard had a bargaining contract with I.U.O.E. which covered, among other things, such wages and benefits to which Standard's employees would be entitled. The appellants were not members of the I.U.O.E., belonging, instead, to the Hod Carriers' Union.

Standard Oil also had a contract with Vowell Construction Company, which provided that Vowell would furnish to Standard the necessary labor and equipment required by Standard to maintain the plant. At the end of each month Vowell would bill Standard, at pre-determined rates, for the amount of labor and equipment used during the month. This contract expired by its own terms January 4, 1957, and was not renewed when Vowell was underbid for the work to be done during 1957.

Eight of the appellants were laid off in November, 1956 when Standard informed Vowell that less men would be needed to handle the work. The employment of the remaining appellants was terminated by Vowell upon expiration of the contract on January 4, 1957.

Thereafter appellants, through the Hod Carriers' Union, filed charges with the National Labor Relations Board against Standard Oil, alleging, among other things, that Standard had caused Vowell to terminate their em-

ployment. These charges were investigated, but the Regional Director found the evidence would not support the issuance of a complaint. This action was appealed to, and upheld by, the General Counsel.

The gravamen of the complaint filed below[1] is that appellants were in fact the employees of Standard Oil and, as such employees, were entitled to the same benefits and protection of the bargaining contract as were the other employees of Standard. Prayer was for damages equivalent to the sum of back wages lost by appellants as the result of Standard's paying them wages less than that called for by the contract, plus such wages as were owing them since date of their alleged wrongful discharge. All relief was denied appellants when the lower court found that they had been employees of Vowell Construction and not of Standard Oil.

Appellants, in their brief, make repeated references to the National Labor Relations Act and alleged violations thereof by Standard in dealing with these appellants, but such arguments are inappropriate here since the "Plaintiffs' Original Amended Petition," upon which this case was tried, made no mention of the Act and in no way brought the action within its scope.

Stripping this case down to its fundamentals, we have presented nothing but a challenge of the findings of fact of the trial court. It is well settled that, in order for a reviewing court to set aside findings of fact by a trial

---

1. A previous suit was filed by appellants against this appellee based upon the same facts seeking reinstatement and back wages, but the lower court dismissed the petition on the ground that the alleged cause of action was within the exclusive jurisdiction of the National Labor Relations Board. On appeal we reversed and remanded on a point not material here, 1958, 261 F.2d 443.

court sitting without a jury, it must be clearly demonstrated that such findings are without adequate evidentiary support in the record, or were induced by an erroneous view of the law,[2] and the burden of showing that the findings are "clearly erroneous" is on the one attacking them.[3] A thorough study of the entire record in this case convinces us that this burden has not been successfully discharged by appellants.

On the contrary, the evidence presented to the trial judge fully supports the findings made. It was shown, for instance, by testimony and exhibits, much of which was undisputed: that Vowell Construction handled all necessary personal information of the appellants, including the social security numbers; that appellants were carried on Vowell's payroll, and it was Vowell who did the actual paying of appellants; that all pay records were kept by Vowell, including the 1948-1956 records here involved; that Vowell made all income tax deductions from appellants' pay and deducted and paid the required social security tax; that workmen's compensation insurance was carried by Vowell on the appellants, and whenever appellants applied for Texas Workmen's Compensation Benefits after release from employment, they signed up as employees of Vowell, and the payments made to them were charged against Vowell's account; that appellants had the benefit of Vowell's employee benefit plan; that several of the appellants were driven to work each day in a truck sup-

---

2. Rule 52(a), Federal Rules of Civil Procedure, 28 U.S.C.A.; *Kwong* v. *Occidental Life Insurance Co. of California*, 5 Cir., 1960, 273 F.2d 691, 695; *Bogue Electric Manufacturing Co.* v. *Coconut Grove Bank*, 5 Cir., 1959, 269 F.2d 1, 4; *Burgher* v. *Campbell*, 5 Cir., 1957, 244 F.2d 863, 864.

3. *United States* v. *duPont & Co.*, 1955, 351 U.S. 377, 381; *Grace Bros.* v. *Commissioner of Internal Revenue*, 1949, 173 F.2d 170, 174.

plied by, and driven by an employee of, Vowell; that the tools and equipment used by appellants in their work at Standard's plant were owned and supplied by Vowell; that Vowell carried an insurance and retirement program for its employees, and those of the appellants who had worked the required length of time signed up for these programs; that Standard's employees belonged to the I.U.O.E., while appellants belonged to the Hod Carriers' Union, the latter union having no contract with Standard; that a seniority list was maintained under the bargaining contract between Standard and I.U.O.E., which list did not include appellants; that appellants, through the Hod Carriers' Union, filed charges with the N.L.R.B. against Standard on the theory that they were employees of Vowell; and that the tax withholding statements showed appellants' employer to be Vowell.

There was additional evidence introduced which showed the employer-employee relationship actually to exist between Vowell Construction and the appellants rather than between Standard Oil and the appellants, but in view of the overwhelming showing set out above, we deem it unnecessary to develop the thesis further.

Concluding, therefore, from the record before us that appellants were not the employees of Standard Oil, it follows that they are not covered by the provisions of the bargaining contract between Standard and its employees. Keeping in mind that this case is to be decided on common law principles and not pursuant to the National Labor Relations Act, appellants are forced to demonstrate, since they are actually suing as third-party beneficiaries to the contract, that the contracting parties intended the contract to be for their benefit, and that

they accepted it either expressly or by necessary implication.[4]

Here, there is abundant evidence to show that, at the negotiations between Standard and the International Union of Operating Engineers, the I.U.O.E. did not intend to contract for the benefit of the appellants as members of the Hod Carriers' Union. And there is no evidence that appellants ever accepted the contract, if they had the power so to do.

In view of the foregoing, the judgment of the court below is, in all respects,

AFFIRMED.

A true copy

Test: Edward W. Wadsworth
Clerk, U. S. Court of Appeals, Fifth Circuit
By Clara R. James
Deputy
New Orleans, Louisiana
(Seal) October 18, 1961

---

4. The following cases from Texas support this proposition: *Stahl* v. *Rawlins*, Civ. App., 1957, 304 S.W.2d 594; *Lindler* v. *MacClure*, Civ. App. 1956, 292 S.W.2d 381; *Banker* v. *Breaux*, Comm. of App., 1939, 128 S.W.2d 23; *Trice* v. *Lee*, Civ. App. 1938, 119 S.W.2d 673; *Cannonball Motor Freight Lines* v. *Grasso*, Civ. App., 1933, 59 S.W.2d 337. See also 10-A Tex. Jur. (Rev.), Contracts, §291.

JUDGMENT.

Extract from the Minutes of May 26, 1961.

MANUEL CEDILLO, ALBERTO SANCHEZ ET AL.,

No. 18293 versus

STANDARD OIL COMPANY OF TEXAS.

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Texas, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellants, Manuel Cedillo, and others and the surety on the appeal bond herein, St. Paul Mercury Insurance Co., be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

Filed 11th day of September, 1961. Edward W. Wadsworth, Clerk of the United States Court of Appeals.

[86] **IN THE**

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 18293

MANUEL CEDILLO, ALBERTO SANCHEZ ET AL.,
Appellants,

vs.

STANDARD OIL COMPANY OF TEXAS.
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS.

(September 11, 1961.)

ON PETITION FOR REHEARING.

Before CAMERON and BROWN, Circuit Judges, and HANNAY, District Judge.

PER CURIAM.

Upon considering the petition for rehearing filed by appellants, it is ordered that said petition be and it hereby is DENIED.

SEC. 151, TITLE 29, U.S.C.

The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly ad-

justment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

SEC. 152, SUBSECTION (3), TITLE 29, U.S.C.

The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual having the status of an independent contractor, or in the domestic service of any family or person at his home, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.